IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE
Assigned on Briefs February 25, 2009

STATE OF TENNESSEE v. WILLIAM "BILL" E. BOLINGER

Appeal from the Criminal Court for Greene County
No. 07-CR-411 John F. Dugger, Jr., Judge

No. E2008-01777-CCA-R3-CD - Filed May 29, 2009

The defendant, William "Bill" E. Bolinger, was convicted by a Greene County Criminal Court jury of hindering a secured creditor, a Class E felony, for which he received a two-year sentence as a Range I offender to be served with ninety days in the county jail and the balance on house arrest. On appeal, the defendant challenges the sufficiency of the evidence and whether a bank properly used law enforcement to collect a loan. We affirm the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

JOSEPH M. TIPTON, P.J., delivered the opinion of the court, in which JAMES CURWOOD WITT, JR., and NORMA MCGEE OGLE, JJ., joined.

Agnes Sipple Trujillo, Rutledge, Tennessee, for the appellant, William "Bill" E. Bolinger.

Robert E. Cooper, Jr., Attorney General and Reporter; Melissa Roberge, Assistant Attorney General; C. Berkeley Bell, Jr., and Haley Johnson and Cecil Clayton Mills, Jr., Assistant District Attorneys General, for the appellee, State of Tennessee.

OPINION

This case relates to a loan made to the defendant by Heritage Community Bank, which was secured by a 1966 Chevelle car, a 2002 Pontiac vehicle, and business equipment. The defendant failed to make the required payments on the loan, and he failed to produce or provide information about the 1966 Chevelle to allow the bank to gain possession of it.

At the trial, Tommy Burns, president of Heritage Community Bank, testified that the defendant called him to inquire whether Heritage would refinance two cars for which the defendant had loans with another financial institution. He said that he referred the matter to Pete Hayes and that the bank made the loan. He said the defendant then failed to comply with the loan's terms.

Mr. Burns testified that in addition to his dealings with the defendant through the bank, he had done business with the defendant, who reconditioned and rebuilt classic cars. He said he knew

the defendant in this capacity before the defendant's loan request. He acknowledged having told the defendant that if the defendant ever wanted to sell the 1966 Chevelle, he would be interested in buying it. He denied remembering that he offered the defendant $15,000 for the car.

Mr. Burns testified that Mr. Hayes had authority to make loans without Mr. Burns's approval. He said that before the loan was made, Mr. Hayes never expressed any concern about the defendant's creditworthiness. Mr. Burns said that he authorized the loan because he knew the defendant needed help. He said he told Mr. Hayes to get the titles and the payoff when making the loan. He said that Mr. Hayes said he had obtained the defendant's credit report. Mr. Burns said that the defendant's credit was not too poor for a secured loan to be made.

Mr. Burns testified that the bank was never able to recover the Chevelle or the business equipment. He said the defendant brought the Pontiac to the bank for it to be sold. He said that with respect to the business equipment, it was his understanding from Mr. Hayes that the defendant's landlord would not open the premises where the equipment was stored. He said that one of the owners of the building where the equipment was located had business with Kent Bewley. He identified Mr. Bewley as chairman of the board of the bank.

Mr. Burns said that it was not unusual for the bank to loan money on property that no one from the bank had seen. He said the bank had gone through the process of attempting to recover the Chevelle but had been unable to do so. He said that Mr. Hayes handled all repossession efforts and that sometimes, but not always, the bank hired an outside repossession agent.

Pete Hayes, a vice president at Heritage Community Bank, testified that he met with the defendant in June 2007, after Mr. Burns's secretary called and requested that he process a note for the defendant. He said that Mr. Burns, not he, made the credit decision and that he only processed the paperwork. He said that he did not obtain the defendant's credit history and that he had concerns about the defendant's ability to repay the loan. He said that the loan was secured by a classic car, a second vehicle, and equipment the defendant used in his car repair business. He said that Mr. Burns told him to make the loan on the Chevelle and that he decided on his own to ask for the additional collateral. He said that in the loan process, he obtained the titles to the two vehicles from another institution that received payoffs for earlier notes they held on the vehicles.

Mr. Hayes testified that the defendant missed his first payment on the loan. He said he called the defendant, who promised to pay and also claimed to have a payment and a receipt. He said the defendant never made a payment. He said that after several conversations, the defendant brought the Pontiac to the bank, which was then sold at auction. He said, however, that he was not able to repossess the Chevelle. He said the defendant made various statements about the Chevelle's location, including that it was at Horse Creek, that it was at the defendant's brother-in-law's, that it was at his cousin Frank Bolinger's house, that it was in Lenoir City, and that it was in Morristown. He said the defendant did not reveal a more specific location. He said the defendant made a claim that he had sold the Chevelle and was awaiting payment from Bank of America. Mr. Hayes stated that he decided that the defendant did not have the Chevelle and did not pursue the matter any further. He said he obtained a "possessory warrant" for the Chevelle and the equipment. He said

that he spoke with the defendant's landlord but that the landlord would not allow him access in order to obtain the equipment.

Mr. Hayes acknowledged that at the time the loan was made, he had no proof of the Chevelle's existence or location other than the defendant's word. Likewise, he said that his only proof that the defendant moved the Chevelle was the defendant's statement to that effect and rumors he heard.

Detective Stuart Kilgore of the Greeneville Police Department testified that the defendant contacted him in 2006 and asked him to go to Lenoir City to retrieve the Chevelle. He said the defendant reported having sold the car to a person who would not pay him for the car. He said that four or five weeks later, in September 2006, he approached the defendant in an effort to get the defendant to surrender the car to the bank. He said that the defendant told him that David King was holding the Chevelle for him in Morristown. He said that he contacted Mr. King, who said he did not have the car. He said the defendant told him he should contact Mr. King's son, but that when he did so, the son denied having the car, as well. He said he also went to Morristown to try to find the car but that it was not where the defendant said it would be.

Detective Kilgore said that he initially advised the defendant that his dispute with the person in Lenoir City was a civil matter. He said, however, that he viewed the defendant's situation with the bank differently. He said that he listed the Chevelle in the "N.C.I.C." database as stolen in order to have the car seized. He said he was not pressured by the bank to investigate the case, although he acknowledged that the bank filed a police report.

Detective Beth Dyke of the Greeneville Police Department testified that in September 2006, Pete Hayes filed a police report about a car that Heritage Community Bank was having trouble obtaining. She said the defendant was arrested the following day. She said she had known Kent Bewley all her life and that her father had worked for Mr. Bewley for fifty-three years.

The defendant did not testify or offer other evidence. The jury found the defendant guilty and assessed a fine of one dollar. The trial court sentenced the defendant to two years as a Range I offender, to be served with ninety days in jail and the balance on house arrest. The court set restitution at $12,000. This appeal followed.

I

The defendant challenges the sufficiency of the convicting evidence. Our standard of review when the sufficiency of the evidence is questioned on appeal is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." Jackson v. Virginia, 443 U.S. 307, 319 (1979). This means that we may not reweigh the evidence, but must presume that the jury has resolved all conflicts in the testimony and drawn all reasonable inferences from the evidence in favor of the State. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984); State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978).

Tennessee Code Annotated section 39-14-116 provides:

> (a) A person who claims ownership of or interest in any property which is the subject of a security interest, security agreement, deed of trust, mortgage, attachment, judgment or other statutory or equitable lien commits an offense who, with intent to hinder enforcement of that interest or lien, destroys, removes, conceals, encumbers, transfers, or otherwise harms or reduces the value of the property.
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> (b) For purposes of this section, unless the context otherwise requires:
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> (1) "Remove" means transport, without the effective consent of the secured party, from the state or county in which the property was located when the security interest or lien attached; and
>
> (2) "Security interest" means an interest in personal property or fixtures that secures payment or performance of an obligation.
>
> (c) An offense under this section is a Class E felony.

The defendant contends that the State failed to prove that the Chevelle existed or that the security interest was ever perfected. He also contends that lying to a collection agent does not constitute a criminal offense.

The State presented circumstantial proof of the Chevelle's existence. The defendant made representations to bank employees about the car. The defendant claims that Mr. Hayes testified that he concluded the car did not exist, but we do not believe this is an accurate interpretation of his testimony. Mr. Hayes said that after the defendant's various statements about the car's location turned out to be untrue, he "concluded [the defendant] didn't really have the vehicle so I did not pursue further. We got a possessory warrant for that and the equipment." The circumstantial proof of the car's existence was sufficient.

Likewise, we reject the defendant's argument that the State's case must fail for lack of proof that the security interest was perfected. The statute does not require that a security interest be perfected. T.C.A. § 39-14-116; cf. Ashworth v. State, 477 S.W.2d 224, 226 (Tenn. Crim. App. 1971) (holding that proof of perfection of security interest was not required for prosecution under former Code section 39-1957 for unlawful disposition of vehicles). The State presented proof that the bank retained a security interest, whether or not perfected, in the car when it made the loan.

The defendant's argument that lying to a collection agent does not amount to a crime must also fail. In the light most favorable to the State, the evidence shows the defendant did more than lie to the bank and the police about the car's location. The defendant claimed the car was in various locations, not all of which were in the same county. He made misrepresentations about the car's

locations, and he refused in some instances to provide a specific location. The defendant knew that the bank was attempting to repossess the car, and despite this, he attempted to sell it. This proof is sufficient to support the conviction.

II

The defendant also argues that the bank improperly used the police as a collection agent. He claims that this was done for the personal benefit of Mr. Burns, who was an antique car afficionado and would be able to buy the car from the bank at less than market value if the defendant defaulted. The record does not bear out these factual allegations. Further, the defendant has cited no authority for the propositions that the police action in this case was improper or that he is entitled to relief on this basis. This issue is without merit.

In consideration of the foregoing and the record as a whole, the judgment of the trial court is affirmed.

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JOSEPH M. TIPTON, PRESIDING JUDGE